

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of:

FLOCKHART et al.

Serial No.: 10/673,105

Filed: September 26, 2003

Atty. File No.: 4366-113

For: "CONTACT CENTER RESOURCE  
ALLOCATION BASED ON WORK  
BIDDING/AUCTION"

) Group Art Unit: 3623

) ) Examiner: Nadja N. CHONG CRUZ

) ) Confirmation No.: 2566

) ) REASONS SUPPORTING PRE-APPEAL  
BRIEF REQUEST FOR REVIEW

|   |   |
|---|---|
| CERTIFICATE OF TRANSMISSION   |   |
| I HEREBY CERTIFY THAT THIS CORRESPONDENCE<br>IS BEING TRANSMITTED VIA THE OFFICE<br>ELECTRONIC FILING SYSTEM IN ACCORDANCE<br>WITH 37 CFR §1.6(a)(4) ON |   |
| JUNE 30, 2010   |   |
| SHERIDAN ROSS P.C.  |   |
| BY:   |  |

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sirs:

The following sets forth Applicant's Reasons in Support of the Pre-Appeal Brief Request for Review submitted herewith. Also submitted herewith is a Notice of Appeal and a Request for a Pre-Appeal Brief Conference, together with the associated fee.

Although no additional fees are believed due in connection with the filing of these papers, please charge any such fees deemed necessary to Deposit Account No. 19-1970.

The Examiner's objections omit essential elements or misinterpret the claims to manufacture the rejection of the pending claims. In particular, the cited references do not teach, suggest, or determine whether a "first set of resources comprising a plurality of members" can service a first and second work items and two members of a second set of resources bidding to address the work item. Accordingly, it is submitted that all the claims are in condition for allowance.

Claims 55-76, 78-88, and 89-100 were rejected under 35 U.S.C. §112, second paragraph as failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office Action incorrectly states that the first bid is always selected. *See Office Action*, dated March 31, 2010, p. 3. The claim element clearly states that “based on the comparison, the processor selecting the first bid.” Thus, the first bid is selected due to the comparison of the first and second bids. The second bid could be selected if the comparison is different. Thus, the comparison of bids and the selection of the first bid based on the comparison are clear.

Claims 55, 57-64, 67, 71, 74-76, 90-91, 95, and 98-100 were rejected under 35 U.S.C. §103(a) as being unpatentable over British Telecommunications (EP Patent No. 1 246 097 A1) (“BT”) in view of Philonenko (U.S. Publication No. 2002/0131399) (“Philonenko”) and further in view of Official Notice. To establish a *prima facie* case of obviousness, all claim limitations must first be taught or suggested by the prior art. *See, e.g., DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1360 (Fed. Cir. 2006); 80 U.S.P.Q.2d 1641, 1645 (2006). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” MPEP § 2143.03 (citing *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)). The Examiner must then provide an explicit analysis of the motivation for combining the references. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007); 82 U.S.P.Q.2d 1385, 1396 (2007) (“a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art . . . .”). While the Examiner can choose one of several exemplary rationales from the MPEP to support an obviousness rejection, all the rationales in the MPEP still require the Examiner to demonstrate that all the claim elements are shown in the prior art. *See MPEP § 2143*, Original Eighth Edition, August 2001, Latest Revision July 2008. However, the cited references do not disclose each and every element of the pending claims, whether those references are considered alone or in combination.

The embodiments presented in the present application are generally directed to a method for allocating work items (e.g., contacts to a call center or customer service requests), among a plurality of sets of resources using competitive bidding. The work may be routed to differing bidding and nonbidding sets of resources depending on the value of

the work item and whether or not a work surplus exists. Typically, work is not presented to external resources during times when there is no work surplus. When a work surplus exists, work with low value is generally presented to internal bidders with lower skill sets and/or bid out to external resources, either singularly or in blocks of work. By identifying groups of less profitable or valuable work that may be better off presented to external or outside bidders and groups of highly valuable work that can be presented to internal or inside bidders, the overall performance of an enterprise can be heightened.

The Philonenko reference is generally directed to queuing and distributing events in a call center. *See Philonenko*, ¶¶ [0021]-[0031]. In particular, Philonenko discusses routing rules that distribute events among different agents. *See Philonenko*, ¶¶ [0041]-[0043]. However, there is absolutely no teaching, suggestion or description in Philonenko of two sets of resources. The claims define a resource as having a plurality of members. In other words, the resource can be a set of agents where the set includes two or more agents. Philonenko describes a single set of resources. Indeed, the description of Fig. 3 in Philonenko states that there is an “agent group 71.” *See Philonenko*, ¶ [0041]. Due to this missing description, Philonenko cannot describe elements of the claims that will be described hereinafter. BT discusses a work allocation system. *See BT*, ¶ [0001]. In particular, the work allocation system includes a bidding system that distributes work between work groups. *See BT*, ¶ [0014]. The work groups interface with a mediator that bids for the work group. *Id.* However, BT does not overcome the deficiencies in Philonenko.

Claim 55 will be addressed as generally claiming material common to the independent claims. Claim 55 requires that the processor determine that the queued item cannot be serviced by a first set of resources and, as a consequence, should be subject of a bidding process. The Office Action states that BT does not show this element of the claims. *See Office Action*, dated March 31, 2010, p. 8. The Office Action turns to Philonenko. The section of Philonenko cited in the Office Action describes determining that a first agent is busy and sending a work item to a second agent. *See Philonenko*, ¶ [0060]. However, both agents, described in this section of Philonenko, are both part of the same set of resources. Indeed, Philonenko describes an agent group 71 that includes both the first and second agent. *See Philonenko*, ¶ [0041]. Philonenko does not describe

determining if all the agents in the agent group, including the first agent and second agent, are busy and then acting on that determination.

While BT and the present application present bidding processes, the bidding process claimed is very different from that described in BT. First, the claim requires that a determination be made as to whether a bidding process should result as an entire set of resources cannot act on the work item. Neither Philonenko nor BT contains such a determination. The Examiner points to the phrase “OSS agent 31 prices the work item using a cost function that reflects its business priorities, for example the urgency of the work with respect to penalty clauses, or the value of the customer according to some model (step s4).” *See BT, ¶ [0014].* However, the OSS agent 31 never makes a determination to start a bidding process. Rather, the OSS agent, in BT, simply prices the work item for a bidding process. As such, both Philonenko and BT fail to show this element of the claims. For at least this reason, claim 55 is allowable over the cited art.

Claim 55 also requires that the processor determine that a second queued item can be serviced by a first set of resources and should not be subject of a bidding process. Without determining that a work item should be subject to a bidding process, the references also cannot show a work item should not be subject to a bidding process. Thus, the references also fail to show this determination step. For at least this reason, claim 55 is allowable over the cited art.

Further, claim 55 requires that the processor determine a time for the bidding process. The claim states that the processor determines “times to initiate and complete the bidding process.” The Examiner cites BT to show this element of the claims. *See Office Action, dated March 31, 2010, pp. 10-11.* The section of BT cited by the Examiner says nothing of determining temporal limitations to the bidding process. BT may discuss methods of speeding the bidding process but that description does not describe setting a beginning and end time for the bidding process.

Finally, claim 55 requires that the system include a first queue, a second queue, a first set of resources, and a second set of resources. Further, a first member and a second member of the second set of resources must provide bids. The Examiner cites BT to show these elements of the claim. *See Office Action, dated March 31, 2010, pp. 9-11.* The Examiner points to the mediator agent 29 as the second set of resources. Unfortunately,

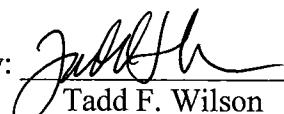
the Examiner's logic does match the claim requirements. The mediator agent 29 sends one bid. *See BT, ¶ [0014]* ("If the mediator agent 28, 29 decides that its local business priorities will be met, it makes a bid for the work item (step s9)."). However, only the mediator agent 29 sends the bid and there is no second member of the resource that also sends a bid. A workgroup member cannot be a member because it fails to send bids. The only logical conclusion is that mediator agents 28 and 29 would be part of the same resource group because both of these "members" send bids. As such, BT can only describe a single resource group. In other words, BT does not describe a first set of resources and a second set of resources. As such, the Examiner has failed to state a *prima facie* case of obviousness. For at least this reason, claim 55 is allowable over the cited art.

Respectfully submitted,

SHERIDAN ROSS P.C.

Date: June 30, 2010

By:



Tadd F. Wilson

Reg. No. 54,544

1560 Broadway, Suite 1200

Denver, Colorado 80202

Telephone: 303-863-2987